

Court

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,
PLAINTIFF,

FILED

'07 APR 13 A9:55

-VS-

TIM HOLOHAN, et al.,
DEFENDANTS.

CIVIL ACTION NO. 04-253E

JUDGE: SEAN J. MCLAUGHLIN

MAGISTRATE JUDGE: SUSAN BAXTER

SHOW OF CAUSE FOR FAILURE TO FILE

PRETRIAL NARRATIVE STATEMENT

NOW COMES Jaun Davila-Bajana, Pro Se (Plaintiff); and hereby respectfully submits his Show of Cause as directed by Judge Baxter in the Court's Order of April 3, 2007. As set forth more fully below, Plaintiff had been attempting to maintain his Cause in an acceptable procedural manner before the Court. However, it would appear that the Court is, understandably, attempting to move the Cause forward -- which is both equitable and just in order to properly allocate the Court's precious resources.

PROCEDURAL BACKGROUND

As an initial note, Plaintiff Davila will acquiesce that his Cause has been on the Docket of this Court for an extended period of time. Though his research in civil law has shown

that this would hardly be considered "longer than normal".

Procedurally though, Plaintiff is presently in a quandry as he has filed his Response to the Defendants' SECOND Motion to Dismiss; and is presently awaiting a Reply to same. And as he has stated in his repeated requests for Extension(s) of Time, the Defendants have raised a "novel" defense to the Claims in his Complaint. As such he fears that there could be two varying, and in certain respects, distinct and possibly contradictory, theories that he would have to place before the Jury.

But this Court, as noticed on the Plaintiff in the Defendants' April 9, 2007, Motion for Enlargement of Time, has Denied his Extension to and including fourteen (14) days after the disposition of the Defendants' pending Motion. So at this time Plaintiff deems that he would be in an area of procedurally having to place the requested materials before the Court.

DISCUSSION

Plaintiff will not belabor this Honorable Court with and extended Argument for his Show of Cause. But he will state that he is/was struggling in order to prepare the requested materials as the Order of August 23, 2006, stated:

IT IS FURTHER ORDERED that on or before December 11, 2006, plaintiff shall file a narrative written statement of the facts that will be offered by oral or documentary evidence at trial and shall include a list of all exhibit to be offered into evidence at the trial of the case and a list of the names and address of all witnesses the plaintiff intends to call. Plaintiff shall include a summary of the anticipated testimony of all witnesses.

Ibid.

This is an exhaustive task and Plaintiff had reviewed the materials which he has that will be used and found that there

is additional materials that he will be presenting to the Jury. As such he is presently awaiting materials from outside agencies and also Freedom of Information Act requests to obtain materials for the referenced Narrative.

As such, and because of the absolutely new and unbefore presented Defense now before the Court, Plaintiff deemed he has/had a good faith reason to Enlarge the Time to file his Narrative. But this Court, in its infinite wisdom and understandable predisposition to move cases forward, has now made it patently apparent that is will not tolerate any further delays.

And even though Plaintiff had timely and properly sought the Court's Leave to await a later date to file his Narrative -- not as a response to the Show of Cause, as Plaintiff had not yet received it at the time he filed his last request for an extension of time -- and, in fact, has not received the Denial as referenced in the Defendants' latest Motion for enlargement of Time -- he will now make his effort to provide the Court with the Narrative. Though he will state that it may have to be supplemented at least once before Trial as materials become available.

In sum, Plaintiff would seek this Court to accept his "Show" as the fact that he has been diligently filing materials in this case, always has met deadlines (some with extensions), filed everything Ordered, Responded in a forthright and good faith manner to all pleadings filed by the Defendants, filed his pleadings and other materials in proper format to assist the Court, and otherwise has done everything that he could to prosecute his Cause in a timely and just manner. And at no

time has he ever attempted to obstruct this Court and/or its business; nor has he attempted to frustrate it.

Also, for the Record, Plaintiff will state that he has diligently and properly dealt with the Defendants in the prosecution of this Cause. And as such he deems that he has made every effort that is reasonable and due to the Court.

But, as noted above, Plaintiff will submit his Narrative at this time as an Exhibit to this Show of Cause. See: Exhibit A (submitted under separate cover within the allotted ten (10) days). To wit, Plaintiff cannot copy his materials at this time because the prison copy machine has been removed for repair and a replacement has not been made available. But Plaintiff asks the Court to accept his Exhibit A, Narrative, on April 16, 2007.

This will allow the prison Thursday and Friday to provide him with a copier to prepare his Narrative and copies for the Defendants. And Plaintiff will submit the Narrative to the Court and the Defendants Attorney of Record on the next available Legal Mail day -- which would be Monday, April 16, 2007.

CONCLUSION

Plaintiff is a pro se indigent inmate litigant and seeks the Court's exercise of liberal indulgence to allow him to be able to properly and fully place his Cause before the Court. And he would also state that he is not literate in the English language as he is Spanish immigrant and English is his second language. As such, in conjunction with his not being schooled in the law, he also must rely on other inmates to assist him

in the writing and typing of his pleadings.

And this reliance has also caused Plaintiff to take extra time to research and prepare his pleadings and other materials because he must then relay it all to another inmate -- who then must refine it and place it on paper. Notwithstanding the the Court's admonishment in its Order of 08/23/06 -- that materials that are not disclosed will be excluded at the upcoming Trial -- so Plaintiff wanted to assure that he has everything in the Narrative that he will be utilizing at same.

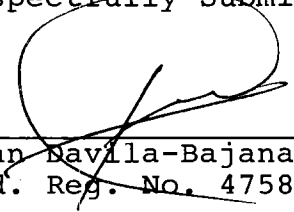
WHEREFORE PLAINTIFF PRAYS that the Court will accept his Show and accept his Narrative, Exhibit A, on April 16, 2007, out of time and find that this will not unduly prejudice the Defendants.

AND FURTHERMORE, will find that Plaintiff has not failed to prosecute his Cause, but merely is a struggling pro se inmate who has been given needed time to place his Cause before the Court.

AND FURTHERMORE, will Grant the Defendants' their requested Extension of Time to file their Narrative for fourteen (14) days, as moved for; or to and including April 30, 2007.

AND FURTHERMORE, Grant the Parties any additional Relief the Court deems just and proper.

Respectfully Submitted,




Juan Davila-Bajana, Pro Se
Fed. Reg. No. 47580-053

DECLARATION AND CERTIFICATE OF SERVICE

I, Juan Davila-Bajana, hereby declare and affirm, under the penalty of perjury pursuant to 28 USC § 1746(2), that the foregoing pleading is true and correct to the best of my knowledge and recollection; and that I served a true and correct Original, by first-class postage prepaid surrender to the prison officials, of the foregoing pleading and accompanying Declaration, this 11th day of April, 2007, to:

1. Paul D. Kovac
Assistant U.S. Attorney
for Western District of PA
700 Grant Street
Suite 4000
Pittsburgh, PA 15219



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